

**PROPOSED REGULATIONS BY DLSE TO IMPLEMENT
THE PROVISIONS OF AB 1688
GOVERNING ENFORCEMENT AND REGISTRATION
IN THE CAR WASH INDUSTRY
Title 8, California Code of Regulations
Division 1, Chapter 6, Subchapter 11
Sections 13680 through 13693**

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code ' 11346.9(d), the Labor Commissioner incorporates the Initial Statement of Reasons prepared in this matter.

A.

The following sections were amended following the public hearing and circulated for further public comment.

' 13682 Conditions for Registration, Initial and Renewal

Subsection (b)(1) was modified to provide that a surety bond of \$15,000 is required for registration. The former section required a bond of \$15,000 multiplied by the number of branch locations operated by the employer.

Subsection (b)(3) was modified to provide that the Labor Commissioner may determine that a surety bond in excess of \$15,000 is required and shall give 30 day written notice of the increased amount to the employer. The former section provided that the increase in the bond could only take place 30 days prior to the expiration date of the employer's registration. The new section indicates that the increase can be required at any time with 30 days notice.

The change in the bond requirement was to link the size of the bond to a number of factors including the employer's history of violations, final judgments and size of the business including the number of employees and branch locations. These factors have a greater relationship to the need for a larger bond than the number of branch locations, only.

DLSE Form 666 (08/04), incorporated by reference into Subsection (a), has been modified to eliminate

the reference that completion and submission to the IRS of IRS Form 8821 is voluntary, since it is a requirement of registration.

13693 Action Against Bond, Inadequacy of Bond, Cancellation of Bond, Retention of Bond

Subsection (a) has been modified to provide that, in addition to the Labor Commissioner, the employee who is damaged because of the employer's failure to pay wages, interest on wages, gratuities or fringe benefits, may proceed against the employer's surety bond. The change in subsection (a) was necessary to be consistent with the other provisions of the statute and regulations which make it clear that the bond is for the benefit of employees damaged by the employer.

B.

Following the public hearing, non-substantive clerical corrections were made to the regulations as follows:

In §13680(e), subsections (e)(3) through (e) (15) were renumbered to (e)(2) through (e)(14). Subsection number (e)(2) was inadvertently omitted from the original text and the change is necessary so that the numbering is correct.

LOCAL MANDATES DETERMINATION

These regulations impose no mandates on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS:

During the public comment period following issuance of these proposed regulations, in addition to proposed regulation section 13694, written comments were received from the following persons: 1) Thomas Grady, Lake Car Wash, Lake Elsinore, CA.(GRADY); 2) Kirk Kuzmanic, Rancho Car Wash(KUZMANIC); 3) Trade Wings, International, Inc. dba Waterman Car Wash(WATERMAN); 4) R. Thomas Peet, American Car Wash, Palm Desert, CA(PEET); 5) Chuck Buchanan, GE Ionics(BUCHANAN); 6) Ihsan Majid(I.MAJID); 7) Allen Hutchison, Hutch's Car Washes, Hayward, CA(HUTCHINSON); 8) Chuck Brassfield, Capitol Premier Car Wash, San Jose, CA(BRASSFIELD); 9) Mario Castillo (CASTILLO); 10) Eric Randall, Mirage Carwash (RANDALL); 11) Hector Rodriguez (RODRIGUEZ); 12) Steven Tugari (TUGARI); 13) Michael Walters (WATERS); 14) Michael Majid (M.MAJID); 15) Bill Boot, Corning Truck & RV Center, Corning, CA (BOOT); 16) Jeremy Lezin, Cruz Car Wash, Soquel, CA (LEZIN); 17) Thompson

Fetter, T. Fetter & Co., Inc., San Diego, CA (FETTER); 18) Brad Hooper (HOOPER); 19) Stephen Mirabito (MIRABITO); 20) Patrick Shea, President, Western Carwash Association (SHEA); 21) Assembly Member Jackie Goldberg (GOLDBERG); 22) Becky Monroe, Bet Tzedek Legal Services (MONROE); 23) Anita Garcia, UCLA Labor Center (GARCIA); 24) Victor Narro, UCLA Labor Center (NARRO); 25) Itzel Williams, UCLA DOSH (WILLIAMS); 26) Anel Flores, Legal Aid Foundation of Los Angeles (LAFLA); 27) Jose Tello, Neighborhood Legal Services of LA County (TELLO); 28) Adrienne Fitch-Frankel, CalCOSH Legal Services Support Project, San Francisco (FITCH-FRANKEL); 29) Lilia Esther Garcia (GARCIA); 30) Betty Hung, LAFLA (HUNG); 31) Elizabeth Sunwoo, Multi-Ethnic Immigrant Worker Organizing Network (SUNWOO); 32) Josh Stehlik, NLS of LA County (STEHLIK); 33) Alejandra Domenzain, Sweatshop Watch (DOMENZAIN); 34) Steve Arredondo, Traber & Voorhees (ARREDONDO); 35) Sander Romick, HWB Car Wash Inc. (ROMICK); 36) Judy Marblestone, Asian Pacific American Legal Center of Southern California (APALC); 37) Robert J. Duke, The Surety Association of America (DUKE) 38) Hamid Khan, South Asian Network (SAN).

During the public hearing held on June 21, 2005 in Los Angeles, oral comments were received regarding these proposed regulations, as well as proposed regulation section 13694, from the following persons: 1) Sam Olivito, Western Carwash Association (WCA); 2) Patrick Shea, WCA; 3) Jose Tello, NLS of LA County; 4) Anel Flores, LAFLA; 5) Alejandra Domenzain, Sweatshop Watch; 6) Anita Garcia, UCLA Labor Center; 7) Becky Monroe, Bet Tzedek Legal Services (Employment Rights Project); 8) Gilda Rodriguez, NLS of LA County; 9) Fabiola Vilchez, District Director for Assembly Member Jackie Goldberg; 10) Victor Narro, UCLA Labor Center; 11) Raul Ariano; 12) Timothy Kolesnikow; 13) Itzel Williams, Dept of Labor Occupational Safety and Health, UCLA; 14) Betty Hung, LAFLA; 15) Josh Stehlik, NLS of LA County.

During the public comment period following the issuance of the post-hearing revisions, written comments were received from the following persons: 1) Betty Hung, LAFLA; 2) Becky Monroe, Bet Tzedek Legal Service; 3) Judy Marblestone, APALC; and 4) Patrick Shea, WCA.

Summary of General Comments

General comments concerning the legislation itself and not the regulations were submitted by Car Wash owners HUTCHINSON, BRASSFIELD, RANDALL, RODRIGUEZ, TUGARI, WATERS, M. MAJID, BOOT, LEZIN, FETTER, HOOPER and MIRABITO who stated that the singling out of the car wash industry for registration was unfair and that existing labor laws concerning the payment of minimum wage, overtime, and enforcement of the tax laws and safety laws should be sufficient to deal with the problems in the car wash industry. The problems in the car wash industry are due to a lack of

law enforcement. The majority of the industry is in compliance and should not be penalized. The surety bond should not be required. The expense of a registration fee is unfair. The car wash registration law and regulations burden the industry and will result in fewer car washes and will eliminate jobs.

Raul Ariano, a car wash worker, testified at the public hearing concerning conditions facing some car wash workers in the industry. He stated that some workers were paid less than minimum wage and some were paid tips only. There was no payment for overtime, no rest breaks and wages were paid late. He also testified as to some serious health and safety violations.

Becky Monroe of Bet Tzedek Legal Services also submitted a videotape of television news footage that was aired by KVEA and KNBC on May 15, 2003 concerning conditions in the car wash industry.

General comments concerning the delay in the implementation of AB 1688 were submitted by Assembly Member Jackie Goldberg and all of the worker advocate group representatives. Registration fees should have been collected starting January 1, 2004 and the Car Wash Worker Restitution Fund has suffered by failure to collect the fees, as have car wash workers who have been unable to access the Fund for payment of damages. AB 1688 was enacted in response to the need for protection of workers in the Car Wash industry where there are violations of wage and hour and health and safety laws.

Response to General Comments

With the passage of AB 1688, the Legislature made the determination that regulation and registration of the Car Wash industry was within the police power of the state. Registration, a surety bond, information concerning the business and its owners, are all required by statute. The regulations cannot undercut these statutory requirements and are being promulgated to effectuate the purposes of the act.

Summary of Specific Comments to the Regulations and Response

See attached Table.

ALTERNATIVES DETERMINATION

The Labor Commissioner has determined that no alternative would be more effective in carrying out the purposes for which these regulations are proposed or would be as effective and less burdensome to affected private persons than these regulations.